IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1174 OF 2003

M/s. General Instruments Co.,)
194/195, Gopi Tank Road, Mahim,)
Mumbai-400 016.)..Petitioner.

V/s.

1) Union of India, Aayakar Bhavan)
2nd Floor, Room No.242, New)
Marine Lines, Mumbai-400 020.)
)
2) Ms.V.K.Maya D.Kem, Joint)
Director of Foreign Trade.)
)
3) Mr.V.K.Gupta, Joint Director of)
Foreign Trade.)
Both Sr. Nos.2 & 3 having their)
office at Ministry of Commerce)
& Industry Department of)
Commerce, Director General of)
Foreign Trade. Udyog Bhavan,)
New Delhi.)
)
4) The Commissioner of Customs)
New Customs House, Ballard)
Estate, Mumbai - 400 038.)..Respondents.

Mr.Manohar M.Kulkarni, Partner of the petitioner firm duly authorised by all the other partners of the petitioner firm.

Mr.A.J.Rana, senior Advocate with Mrs.S.V.Bharucha for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 7TH APRIL, 2006.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. In this case the petitioner is running from pillar to post since last 20 years seeking justice as

the petitioner is being penalised for the lapses committed by the licensing authorities. In fact, Mr. Rana, learned senior counsel for the respondents fairly admitted that in the present case the petitioner is not the sinner but sinned against.

2. Mr.Manohar M.Kulkarni, a partner of the petitioner firm sought permission to argue the case on behalf of the petitioner inter alia on the ground that in the last 20 years the firm had to face several rounds of litigation on account of erroneous licence granted by the licensing authorities, as a result the firm has closed down its business and has no financial capacity to engage the services of a lawyer. Mr.Kulkarni has furnished a power of attorney executed by all the partners of the firm dated 24/3/2006 wherein all the partners have authorised Mr.Manohar Kulkarni to appear on behalf of the petitioner. Accordingly, we have permitted him to argue the case on behalf of the petitioner.

3. The petitioner is a Partnership firm duly registered under the Indian Partnership Act, 1932. The said partnership firm was managed by Mr.Manohar M.Kulkarni, who has rendered service as Captain in the Indian Army. The other partners of the firm are the

family members of Mr.Manohar Kulkarni.

4. The dispute in the present case pertains to the issuance of a licence requiring the petitioner to fulfil the export obligation by supplying goods to Rastriya Chemicals & Fertilizers Limited (‘RCF’ for short), a Government of India Undertaking. But the Bond in prescribed form executed by the petitioner required the export obligation to be fulfilled by exporting goods to a place outside India. It is not in dispute that the petitioner has fulfilled the export obligation by supplying goods to RCF as per the licence condition. However, action is being taken against the petitioner for not fulfilling the export obligation by exporting goods to a place outside India as per the Bond.

5. The relevant facts are that in the year 1982 RCF floated global tender for supply of various types of capital goods required for its Thal project. In response to the said tender, the petitioner submitted its quotation for supply of thermocouple compensating cables and extension cables. The quotation submitted by the petitioner was accepted by RCF and by a purchase order dated 13th October, 1982 RCF agreed to purchase cables worth Rs.17,49,000/- from the petitioner.

6. With a view to import raw materials required in the manufacture of capital goods to be supplied to RCF, the petitioner applied to the Joint Chief Controller of Import & Export, Bombay ('JCCI' for short) on 22/11/82 seeking a licence under the duty exemption scheme along with the prescribed form duly filled in. As the petitioner was not clear as to which licence would entitle it to import raw materials at concessional rate of duty or under duty exemption scheme in terms of Notification No.210/82-customs dated 10/9/82, the petitioner enclosed along with the said letter, applications addressed to the Advance Licensing Committee as well as the Special Imprest Licensing Committee at New Delhi with a request to the JCCI to forward the applications to the concerned cell so that appropriate licence is issued, on the basis of which the petitioner could import raw materials at concessional rate or under duty exemption scheme and on manufacture, supply the resultant product to RCF.

7. On processing the application made by the petitioner, the office of JCCI, Bombay by a letter dated 30th November, 1982 called upon the petitioner to furnish essentiality certificate from the RCF. Accordingly, the petitioner obtained an essentiality certificate from the project authority i.e. RCF to the

effect that they have agreed to purchase goods valued at Rs.17,49,000/- from the petitioner for their Thal Project under the global tendering procedure and that the Thal project is fully financed by the Government of India. In that certificate issued by RCF it was further stated that the petitioner is eligible to import raw materials required for the manufacture of equipments to be supplied to it at the concessional rate of duty. The petitioner forwarded the said certificate to the Jt. C.C.I., Bombay.

8. Inspite of the clear knowledge that the Thal Project of the RCF was wholly financed by the Government of India, the Controller of Imports & Exports, Bombay issued a SIL to the petitioner bearing No.P/L/2993896 dated 30th May, 1983 under AM 84 policy permitting the petitioner to import raw materials as per list attached thereto for approximate value of Rs.5,78,300/- on the condition that, -

a) the petitioner shall supply to RCF export items as per list attached thereto for an f.o.b. value of Rs.17,49,000/- within 6 months from the date of clearance of the first consignment against the said licence.

b) to ensure fulfilment of the export obligation under the said licence, the petitioner shall execute bond with 100% Bank guarantee as per the proforma given in Appendix-38 of the Hand-book of Import-Export Procedure 1981-82 for a sum of Rs.12,14,623/-.

c) goods imported against the said advance licence shall be utilised in accordance with the provisions of Customs Notification No.11/ F-No.602/14/8/DBK dated 9/6/78 as amended from time to time.

d) cash assistance, if any, will be as per the instructions issued by the Ministry of Commerce from time to time.

e) In the event of failure to fulfil the export obligation within the time stipulated, the bond will be enforced and the licence holder shall pay customs duty on the proportionate quantity of the material corresponding to the products not exported."

9. As per condition No.2 of the SIL dated 30/5/83,

the partners of the petitioner executed a bond for Rs.12,14,623/- in the prescribed form on 17/6/1983 to ensure fulfilment of the obligations under the licence dated 30/05/83. Clause 5(a) of the Bond executed by the petitioner in the prescribed form reads as under:-

> "5(a) If the said importer shall within 6 months from the date of clearance of the importation of the first consignment into India against the subject licence, or such further time as may be granted to him, make export of goods corresponding to the resultant products as specified in the said Duty Exemption Entitlement Certificate and hereunder written for ready reference (hereinafter referred to as "the resultant products") required under the aforesaid Notification to a place outside India in accordance with the terms and conditions of the aforesaid licence and Duty Exemption Entitlement Certificate (except to any place in Nepal or Afghanistan if not paid in free foreign exchange and Bhutan and fulfil all other terms and conditions mentioned in the aforesaid Notification and terms and

conditions subject to which clearance of goods was allowed by Collector of Customs). "

10. On execution of the aforesaid Bond, the petitioner imported raw materials from time-to-time aggregating to the C.I.F. value of Rs.3,01,439/- and cleared the same without payment of duty in terms of the bond. It is not in dispute that the petitioner has utilized the imported raw materials in the manufacture of resultant products and in fulfilment of the export obligation contained in the licence, the petitioner has supplied the resultant products to the RCF valued at Rs.17,59,382/- (against export obligation of Rs.17,49,000/- under the licence).

11. After fulfilling the export obligation, the petitioner approached the project authority namely the RCF seeking requisite endorsement on the Duty Exemption Entitlement Certificate (‘DEEC’ for short). Initially RCF declined to make endorsement on the ground that the Thal project is financed by the Government of India and not by organisations like World Bank, OECF, ADB, etc. as contemplated under Exemption Notification No.210/82 dated 10/9/82. However, lateron, RCF made requisite endorsement on the DEEC book on 2/2/88 (Exh.H) to the

effect that the petitioner has supplied goods valued at Rs.17,59,382/- during the period from 27/7/83 to 10/5/84.

12. In the meantime, a show cause notice dated 5/6th September, 1985 was issued by the JCCI, Bombay calling upon the petitioner to show cause as to why the bond furnished by the petitioner for Rs.12,14,623/- should not be enforced as the petitioner has violated clause 1 of the licence and clause 5 of the Bond. By the said show cause notice, the petitioner was called upon to appear before Mr.G.R.Nair, the Deputy Chief Controller of Imports & Exports on 20th September, 1985 at 3.15 p.m. for a personal hearing.

13. Although the petitioner claims that a personal hearing was given by Mr.G.R.Nair, Deputy Chief Controller on 29/9/85, by a forfeiture order dated 4th December, 1985 Smt.R.Johny, the Controller of Import and Export held that the petitioner failed to fulfil the export obligation imposed under the licence and failed to produce documents within the time stipulated in violation of condition No.5 of the bond and accordingly ordered the petitioner to remit forthwith the bond amount of Rs.12,14,623/-, to surrender the valid R.E.P. licence remaining unutilised, to pay

forthwith to the customs authorities duty with interest at 18% with proportionate quantity of exempt materials and further declared the petitioner to be a defaulter thereby disentitling the petitioner to secure any licence under the duty exemption scheme or under any other provisions of the Import Export Policy announced from time-to-time.

14. Based on the forfeiture order dated 4/12/85 declaring the petitioner to be a defaulter, the Controller of Imports & Exports by a letter dated 20/12/85 denied cash assistance to the petitioner. On filing 1st appeal against the forfeiture order dated 4/12/85, the petitioner claims that the Deputy Chief Controller of Imports and Exports Mr.C.G.Fernandes gave personal hearing on 17/2/86. However, by a letter dated 21/5/86 Smt.R.Johny, the Controller of Imports & Exports informed the petitioner about the rejection of the first appeal on the ground that

(a) Part 'F' of DEEC book duly certified by the project authority has not been submitted.

(b) Certificate of exports in original nor the original export documents submitted

by petitioner.

It was further stated in the said letter that if the petitioner was not satisfied with that decision the petitioner may prefer second appeal in terms of para 149 of Hand Book AM 85-88 period.

15. Being aggrieved by the aforesaid order dated 21/5/86, the petitioner preferred a second appeal before a Committee of Joint Director General of Foreign Trade, New Delhi.

16. During the pendency of the said second appeal, the customs authorities sought to recover customs duty amounting to Rs.3,71,614.82 from the petitioner in respect of the raw materials imported and cleared without payment of duty under the special imprest licence dated 30th May, 1983. Challenging the aforesaid action, the petitioner filed a Writ Petition bearing No.2038 of 1988. When the said petition was taken up for final hearing on 21/10/02, counsel for the petitioner came up with a proposal that the petitioner would deposit the customs duty as demanded and the counsel for the revenue made a statement that within two weeks after the amount is deposited show cause notice demanding the customs duty would be issued and

the same would be adjudicated in accordance with law. The said writ petition was disposed off in the above terms on 21/10/2002. While disposing of the above petition, it was also ordered by the Court that the 2nd appeal filed by the petitioner against the order passed in first Appeal on 21st May, 1986 which was pending before the Chief Controller of Imports & Exports, New Delhi be disposed of within a period of 6 months from the date of receipt of the writ.

17. Thereafter, by the impugned order dated 21st February, 2003, the Appellate Committee consisting of two Joint Director General of Foreign Trade, New Delhi held that the 2nd appeal said to have been filed by the petitioner was not available and by obtaining a copy from the petitioner, the 2nd appeal has been disposed off. It was held that in the current Hand Book of Procedures of Export-Import Policy there is no provision for 2nd appeal against the forfeiture order, however, as per the directions given by this Court, a special committee comprising of two Joint D.G.F.T. has been constituted for hearing the 2nd appeal filed by the petitioner. It was further held that although the forfeiture order and the order passed in first appeal are in accordance with the policy, in view of the fact that the forfeiture order has not been actually

implemented at the bank's level and practically no amount has been transferred out of the firm's account to the Government's account,the forfeiture order does not have any financial effect on the firm and hence no relief is required to be given in the 2nd appeal. Accordingly, the 2nd appeal was dismissed.

18. To complete the narration of facts, it may also be noted that in the light of the forfeiture order passed on 04/12/1985, the licensing authority had initiated debarment proceedings against the petitioner and by an order dated 4th May, 1987 the Deputy Chief Controller of Imports & Exports, Bombay had debarred the petitioner and its partners from receiving any import licences, customs clearance permits, obtaining allotment of imported goods from any canalising agency and / or from importing any goods from AM 88 to AM 90. The first appeal filed against the said order was dismissed by the Joint Chief Controller of Imports & Exports on 28th July, 1987. The second appeal filed by the petitioner against the order passed in first appeal was partly allowed by the Additional Chief Controller of Imports & Exports on 18/6/92 by reducing the period of debarment upto 31st March, 1989. Para 10 & 11 of the said order dated 18th June, 1992 reads as under :-

"10. I have gone through the records of the case very carefully and considered the written and oral submissions made by the appellants in the second appeal under consideration. I find that M/s.General Instruments Co. obtained a special imprest licence No.P/L/2993896 dated 30.5.1983 for Rs.5,78,300/-. The licence was issued subject to the conditions, inter alia, that the firm would export/supply 39 Kms. of Thermocouple compensating the extension cables to RCF, Thal Project for a total f.o.b. value of Rs.17,49,000/- within a period of 12 months from the date of clearance of the first consignment. Against this licence, the firm had imported goods for Rs.2,99,506/-. The proportionate export obligation was completed. To that extent I do not see any malafides on the part of the appellants. I also do not find any mis-utilisation of imported goods although the Deputy Chief Controller of Imports & Exports, Bombay in his Order-in-Original observed so and that the first appellate authority merely agreed with the same. A perusal of the record further indicates that the appellants at no point of time concealed any information. They applied for the special imprest licence to execute RCF, Thal Project. However, the appellants had not been able to identify and chose and correct scheme of import licensing to execute the order. The correct import licensing scheme in their case was project imports. Instead they filed an application for grant of duty free licence under Appendix-19 of Import Policy AM 1982-83. There was substantial difference between the special imprest licence and project import licence. While the former permitted 100% duty free imports, the later entitled only concessional rate of duty. In addition the former licence is issued under the deemed exports meaning by supplies would be made to project aided by IDA / IBRD under global tender system.

11. The appellants may have mis-comprehended the policy in force. But, they did not object when the special imprest licence under reference was granted to them under the deemed export category with specific export obligation with reference to 100% duty free imports. Since they accepted the conditions of the licence and also executed a bond to abide by the conditions of the licence which carried an export obligation, it was incumbent on them to complete formalities in support of their contention of having discharged export obligation notwithstanding that the imported goods were utilised for the execution of the project. The

> project they executed or supplied they made towards the execution of the RCF, Thal Project was not a project falling under the category of deemed exports. This project was not aided by IDA/IBRD. Their request for conversion of their supplies to RCF, Thal Project in the deemed category of exports was duly considered by the competent authority in the Import Trade Control Organisation. Under letter dated 30.10.1985, their request was not considered as the supplies made by them to RCF, Thal Project were not covered under the category of deemed exports. They were advised to convert the special imprest licence into project import licence by paying the customs duty with penal interest thereon with the consent of Ministry of Finance. But they did not do so considering the fact that the appellants mis-understood the provisions of the policy in force and that there was no malafides on their part, I am inclined to take a lenient view. In exercise of powers vested in me under Clause -10(3) of the Imports (Control) Order, 1955, I hereby reduce the period of debarment upto 31.3.1989. The Order-in-Original No.F-5/22/86/ECA/ BOM dated 4.5.1987 passed by the Deputy Chief Controller of Imports & Exports, Bombay, accordingly stands modified to this extent. The second appeal is partially allowed."

19. It may also be noted that when this petition was taken up for hearing, counsel for the petitioner had sought liberty of the Court to make a representation to the concerned Ministry without prejudice to the rights and contentions raised in the petition. Accordingly, as per the liberty granted by this Court on 8/7/2003, the petitioner had approached the Ministry seeking conversion of Special Imprest licence dated 30/5/83 into a Project Import licence. However, by a letter dated 22/8/2003, Senior Technical Officer - TU in the Ministry of Finance rejected the request on the ground that there is nothing called Project Import licence and

as the imports were made in the year 1983 when the Project Import Regulations of 1965 were in force it is not possible to verify the conditions after 20 years.

20. The argument of Mr.Kulkarni, partner of the petitioner before us, is that in respect of the Show Cause notice dated 5/6th September, 1985 personal hearing was granted by Mr.G.R. Nair, Deputy Chief Controller of Imports & Exports, whereas the forfeiture order on the show cause notice has been passed on 4/12/1985 by Smt.R.Johny, the Controller of Imports & Exports. Relying upon the decision of the Apex Court in the case of Ossein & Gelatine Manufacturer's Association of India V/s. Modi Alkalies & Chemicals Limited reported in (1989) 4 SCC 264, Mr.Kulkarni submitted that natural justice demands that the hearing and order should be by the same officer. In the present case, since the forfeiture order is passed by an officer other than the one who heard the matter, the forfeiture order is liable to be quashed and set aside.

21. Mr.Kulkarni further submitted that even the first appeal was heard by the Deputy Chief Controller of Imports & Exports Mr.C.G. Fernandes, whereas the order on first appeal has been passed by Smt.R. Johny, Controller of Imports & Exports who had passed the

forfeiture order. Relying upon the decision of the Apex Court in the case of Amarnath Choudhury V/s. Braithwaite & Co. Limited reported in (2002) 2 SCC 290, Mr.Kulkarni submitted that since the forfeiture order passed by Smt.R. Johny was challenged in the first appeal, she could not have decided the 1st appeal. Therefore, the order in the first appeal passed by Mrs.R. Johny is also contrary to law and is liable to be quashed and set aside.

22. As regards the impugned order dated 21/2/03 passed in second appeal, Mr.Kulkarni submitted that the said order is not a speaking order. As it is expressly recorded that the papers and proceedings were not available, it is evident that the findings recorded therein that the forfeiture order and the first appellate order must have been passed by the competent authority and Smt.R. Johny must have been communicated the same is based on conjecture and without any basis. Such an order based on conjecture is liable to be quashed and set aside. In this connection, he relied upon the decision of the Apex Court in the case of Rukumanand V/s. State of Bihar reported in (1971) 3 SCC 167.

23. Mr.Kulkarni further submitted that as per

condition No.1 of the licence the petitioner was obliged to export the resultant product to RCF and in fact the petitioner has supplied resultant product to the satisfaction of RCF and fulfilled the export obligation set out in the licence. The Bond was executed by the petitioner to ensure fulfilment of the above export obligation. Once the export obligation was fulfilled by exporting goods to the party specified in the licence, it was not open to the licensing authorities or to the Customs authorities to hold that the petitioner has failed to fulfil the export obligation under the licence granted to the petitioner. He submitted that the petitioner has suffered huge loss in this matter on account of purchasing raw materials in the domestic market at a cost of approx. Rs.20.70 lakhs as against duty free import of raw materials under the licence for Rs.5,78,000/- (20.70 - 5.78 = loss of Rs.14.92). Moreover, cash assistance of about Rs.5.52 lakhs, (Rs.1,31,953/- in this case and Rs.4,20,079/- against other order) has been denied to the petitioner. Therefore, when the petitioner has already suffered losses to the extent of about Rs.20.44 lakhs (Rs.14.92 lakhs + Rs.5.52 lakhs), the respondents are not justified in imposing further liability upon the petitioner especially when the petitioner has fulfilled the export obligation as per condition No.1

of the licence.

24. Mr.Kulkarni referred to the order passed by the second appellate authority on 18/6/92 in the debarment proceedings wherein it is clearly held that there was no malafides or misutilisation of the goods on the part of the petitioner. Therefore, when the petitioner has not concealed any information and in fact fulfilled the export obligation as per the licence condition it cannot be said that the petitioner has failed to fulfil the export obligation. He submitted that the burden was on the licensing authority to issue correct licence and having issued wrong licence for supply of goods to RCF it does not lie in their mouth to hold that the petitioner has failed to fulfil the export obligation. The licence was issued with an express condition that the exports should be made to RCF. The petitioner has acted upon the said representation and altered its position by fulfilling the contractual obligation. Therefore, by applying the principles of promissory estoppel, the respondents must be restrained from holding that the petitioner has failed to fulfil the export obligation.

25. Alternatively, Mr.Kulkarni submitted that if condition No.1 of the licence and clause 5 of the Bond

are not read harmoniously, then it will be a contract impossible to perform and such a contract would be hit by Section 56 of the Indian Contract Act, 1872 and in such a case the petitioner cannot be held liable for non performance of such unlawful contract. Accordingly, Mr.Kulkarni submitted that the orders impugned in the petition be quashed and set aside and the respondents be directed to grant all benefits of the special imprest licence including the benefit of import of raw materials without the payment of customs duty.

26. Mr.Rana, learned senior counsel appearing on behalf of the respondents while expressing sympathy towards the petitioner submitted that no relief can be granted in the present petition. He submitted that the grievance of the petitioner that Smt.R.Johny, Controller of Imports & Exports passed the forfeiture order as well as the first appeal is not correct. She had only communicated the orders passed by the respective officers as is the usual practice. Mr.Rana expressed his inability to produce the orders passed by the officers as the concerned files are not traceable.

27. As regards the order passed by the second appellate authority, Mr.Rana submitted that though the

special imprest licence required the petitioner to export goods to RCF, the petitioner could not have availed 100% duty free import benefits because as per notification No.210/82-customs dated 10/9/82 issued under Section 25 of the Customs Act, 1962 total exemption from payment of basic customs duty and additional duty was available only in respect of import of raw materials required for the manufacture of goods to be supplied to International Development Association (IDA) or International Bank for Reconstruction and Development (IBRD) or Bilateral or Multilateral aided projects. Since RCF was not covered under Notification No.210/82 dated 10/9/82, the goods imported by the petitioner under special imprest licence could not have been allowed duty free clearance. Therefore, the Additional Chief Controller of Imports and Exports in the appellate order dated 18/6/92 passed in the debarment proceedings had advised the petitioner to pay the customs duty with interest and take up the matter with the Ministry of Finance to convert the special imprest licence into Project Import licence. However, the petitioner had not taken steps in that behalf and it is only during the pendency of this petition, the petitioner agreed before this Court on 8/7/03 to deposit the customs duty and apply for conversion of licence. In view of the inordinate delay in seeking

conversion of licence, the Finance Ministry by a letter dated 22/8/03 has informed the petitioner that it is not possible to verify or satisfy the conditions retrospectively after 20 years. The petitioner has not challenged the said decision. Accordingly, Mr.Rana submitted that the petitioner is not entitled to any relief in the present petition.

28. We have carefully considered the oral as well as the written submissions made by both the sides.

29. In the present case, the petitioner had applied for a licence so as to import raw materials required in the manufacture of goods to be supplied to RCF under the Global Tendering procedure. In the application for licence, it was clearly stated that the petitioner was not sure as to whether the raw materials required for manufacture of goods to be supplied to RCF under the Global Tendering procedure could be imported duty free under Notification No.210/82-cus. dated 10/9/82 or under a licence at concessional rate of duty. The petitioner had specifically requested for issuance of such licence which will enable the petitioner to import raw materials required in the manufacture of goods to be supplied to RCF.

30. The fact that the licensing authorities called upon the petitioner to obtain essentiality certificate from RCF clearly shows that even the licensing authorities were of the opinion that the supplies to RCF would entitle the petitioner to import raw materials duty free under Notification No.280/82 dated 10/9/82. This is further established from the fact that on production of the essentiality certificate, a Special Imprest Licence was granted to the petitioner specifically stating therein that in fulfilment of the export obligation the petitioner must supply goods to RCF valued at Rs.17,49,000/- as per list attached thereto.

31. To fulfil the above export obligation, the petitioner was required to execute a Bond in the prescribed form with 100% Bank Guarantee in the sum of Rs.12,14,623/-. Accordingly, a Bond was executed on 17/6/83 in the prescribed form. Clause 5(a) of the prescribed Bond form required the importer to make export of the resultant products specified in the Duty Exemption Entitlement Certificate issued under Notification dated 9/6/1978 (as amended) to a place outside India. Thus, condition No.1 attached to the Special Imprest licence required the petitioner to export the resultant product to RCF whereas clause 5(a)

of the Bond executed on 17/6/83 required the petitioner to export the resultant product to a place outside India. In other words, there was conflict between the condition in the licence and the condition in the bond. If goods were supplied to RCF as per licence it would violate clause 5 of the Bond and if the goods were exported outside India as per the Bond, it would violate the licence condition. In these circumstances, instead of taking remedial action the licensing authorities sought to take action against the petitioner. It is not the case of the revenue that the petitioner has obtained the Special Imprest licence by fraud, collusion or misstatement of facts. In fact in the debarment proceedings the second appellate authority in its order dated 18/6/892 (Exhibit ‘X’) had clearly recorded a finding that there are no malafides on the part of the petitioner and that the petitioner has not misutilized the imported goods.

32. In these circumstances, passing a forfeiture order against the petitioner was uncalled for. Therefore, the second appellate authority in the impugned order dated 21/2/03 has taken a reasonable approach that since the forfeiture order dated 4/12/85 has not been ultimately implemented at the bank’s level and practically no amount has been transferred out of

the firm's account to the Governments account, no relief need to be given in the 2nd appeal. It was further held that in view of the non implementation of the forfeiture order, there is no adverse financial effect on the firm.

33. From the aforesaid order dated 21/2/03 passed in 2nd appeal, it is clear that in spite of the forfeiture order the licensing authorities cannot enforce the Bond / bank guarantee. However, the question is whether the petitioner is liable to pay customs duty. It is pertinent to note that the customs authorities have already passed an order confirming demand for the entire customs duty with 18% interest and penalty. The matter is now pending before the CESTAT.

34. Thus, even though the 2nd appellate authority has held that there is no financial implication on account of the forfeiture order, in fact the petitioner is made liable to pay entire customs duty with interest and penalty on account of the forfeiture order. It is not in dispute that Thal Project of RCF being wholly financed by the Government of India, the benefit of duty free clearance under Notification No.280/82 dated 10/9/92 is not available to the petitioner. Thus, the lapse on the part of the licensing authorities in

issuing a licence with Bond conditions which are impossible to perform has serious financial implications on the petitioner. It is true that by the 2nd appellate order dated 18/6/92 passed in the debarment proceedings, it is recorded that petitioner was advised to pay customs duty with interest and approach the Ministry of Finance for conversion of the Special Imprest Licence in to a Project Import Licence, but the petitioner has not accepted the advise. It is only during the pendency of the present writ petition, the petitioner paid the customs duty and approached the Finance Ministry seeking conversion of licence. However, by a letter dated 22/8/03 the request for conversion of the licence has been rejected on the ground that there is nothing like Project Import Licence and that it is not possible to verify the records after a lapse of 20 years. Although, the petitioner has not challenged the said rejection in this petition, there is a specific prayer to treat the Special Imprest Licence into a project import licence. In these circumstances, we are clearly of the opinion that the licensing authorities having held that the petitioner was entitled to import raw materials at a concessional rate of duty on issuance of project import licence, cannot refuse to take steps in that behalf on the ground that the petitioner has not applied for

conversion of the licence expeditiously. Once it is accepted that it was a mistake to issue Special Imprest licence to the petitioner and the conditions attached to the licence and the Bond were wholly impossible to perform, the licensing authorities ought to have taken remedial steps immediately. It is brought to our notice that under Rule 8 of the Foreign Trade (Regulation) Rules, 1993 framed under the Foreign Trade (Development and Regulation) Act, 1992, the licensing authority is empowered to amend the licence. In the present case, the Special Imprest licence dated 30/5/83 was erroneously granted by the JCCI, Bombay and, therefore, under Rule 8 of the Foreign Trade (Regulation) Rules, 1963, the JCCI, Bombay, is empowered to rectify the error by amending the licence.

35. In these circumstances, without going into other arguments advanced by the petitioner in the interest of justice we pass the following order :

a) In the light of the impugned order passed in 2nd appeal on 21/2/03 (Exhibit-W to the petition) the licensing authorities shall not enforce the Bond/bank guarantee executed by the petitioner on 17/6/83 for Rs.12,14,623/-.

b) The JCCI, Bombay shall in exercise of powers conferred under Rule 8 of the Foreign Trade (Regulations) Rules, 1993 shall within six weeks from today amend the Special Imprest Licence No.P/K/2993896 dated 30/5/83 into a licence which may entitle the petitioner to seek regularisation of the imports already made under the said licence at concessional rate of duty if permissible under the Customs Act.

c) In view of the above, the request of the petitioner for cash assistance under the Special Imprest Licence would not survive.

36. The petition is disposed of in above terms with no order as to costs.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)